



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** American Consulting Services, Inc.

**File:** B-276149.2; B-276537.2

**Date:** July 31, 1997

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Terrence M. O'Connor, Esq., and Shirley Maznicki, for the protester.  
Thomas J. Duffy, Esq., Captain Philip T. McCaffrey and John F. Guckert Jr., Esq.,  
Department of the Army, for the agency.  
Karin L. Genis, Esq., for the Small Business Administration.  
Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging post-bid opening cancellation of invitation for bids on ground that cancellation was prompted solely by contracting agency's bad faith intent to avoid awarding a contract to the protester is denied where there is no evidence of such bad faith and where the canceled solicitation did not reflect the contracting agency's minimum needs.
2. Protest that contracting agency transferred its requirement for remedial education services to the Small Business Administration's (SBA) section 8(a) contracting program in a bad faith attempt to avoid continued performance under a small business set-aside contract previously awarded to the protester and in retaliation for filing of a protest is denied where record shows that: (1) significantly higher testing success rate and independent research at other Army installations convinced the contracting activity to convert the current instructor/classroom requirement to an automated tutorial program; (2) agency's decision to convert the procurement from an instructor/classroom format to an automated tutorial program was made several months prior to the contractor's current protest challenging cancellation of another educational services solicitation; and (3) the contracting agency properly classified the offered procurement as a new requirement.

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## **DECISION**

American Consulting Services, Inc. (ACS) protests the Department of the Army's cancellation of invitation for bids (IFB) No. DAKF36-97-B-0002, for certification and accreditation of the Primary Leadership Development Course (PLDC) at the Fort Drum, New York, Noncommissioned Officer's (NCO) Academy. ACS was the apparent low bidder under the canceled IFB. ACS also protests the failure of the Army to exercise the final option of its remedial education services contract, No. DAKF36-94-D-0015, and the transfer of this requirement to the Small Business Administration's (SBA) section 8(a) program. ACS contends that both the IFB cancellation and the transfer of the remedial education services requirement to the section 8(a) program reflect a bad faith attempt by the Army to avoid contract awards to ACS. Because both protests arise from the same allegation of bad faith, we address them in one decision.

We deny the protests.

### **BACKGROUND**

The PLDC IFB was issued on October 17, 1995, and contemplated the award of a firm, fixed-price contract for "all personnel, equipment and materials . . . to perform all services necessary to certify and accredit" the PLDC course for "6 [college] credit hours per student." Of significance to this protest, the IFB identified each PLDC "session" or "class" as being comprised of "approximately 80 students"; bidders were also advised that "approximately 18 contact hours are available to the contractor during the PLDC" to provide the supplemental instruction necessary to obtain the required college accreditation. Originally, the IFB had limited competition to accredited colleges and universities; however, on November 15, the Army issued an amendment which expanded competition to include business concerns--such as ACS--which were "able to obtain the services of one fully accredited college or university."

At the November 26 bid opening, only two bids were submitted. ACS was the apparent low bidder (\$172,800); Jefferson Community College (JCC)--the incumbent for the PLDC requirement--submitted the second lowest-priced bid (\$205,632). Shortly after bid opening, the contract specialist contacted ACS and asked for verification of its bid price; the specialist also asked ACS to identify the name of the college with which it would be subcontracting, and to provide several contract references. Despite several rounds of facsimile correspondence between the contract specialist and ACS, the Army never received any evidence from ACS regarding its university or college arrangements for the PLDC course.

Since August 1994, ACS had been performing a different contract for remedial education services--referred to as the "FAST [Functional Academic Skills Training]

requirement"--at Fort Drum. On December 5, 1995, the contract specialist assigned to the PLDC competition asked the Fort Drum contract administrator who oversaw ACS' performance of the FAST contract to submit a reference for ACS. That same day, the FAST contract administrator executed a reference in which she described ACS as an "administrative nightmare." Although the memorandum acknowledged that ACS' instructional services were satisfactory, the FAST contract administrator described ACS' "operations and management in Maryland" as unsatisfactory due to "cash flow problems," a burdensome bi-monthly invoicing arrangement, several instances of Service Contract Act wage rate violations, and poor communications with Fort Drum.

On December 11, after ACS had failed to respond to the contract specialist's numerous requests for college subcontract and bid pricing information, and as a result of the FAST contract administrator's December 5 memorandum, the contract specialist issued a memorandum to the contracting officer recommending that Fort Drum find ACS nonresponsible. Because ACS is a small business, the contracting officer issued a request to the SBA for a certificate of competency (COC) review of ACS.

From January 9 until January 17, 1996, the SBA conducted its COC review. On January 21, the SBA issued a COC to ACS. As discussed further below, while the SBA's COC review was ongoing, the Army discovered several deficiencies in the PLDC IFB; on January 31, as a result of these deficiencies, the Army canceled the IFB. On February 5, the Army notified ACS of the IFB's cancellation; on March 3, ACS learned that the agency would not exercise the final option of its 1994 FAST contract because the services had been offered to the SBA under the section 8(a) program as a new requirement.<sup>1</sup> On April 30, ACS filed these protests.

Our Office conducted a hearing in this matter in which the protester's president, vice president, educational consultant, and 15 Fort Drum contracting officials testified.<sup>2</sup> Two SBA officials and a Department of Labor (DOL) official also testified. As discussed below, we find no evidence of bad faith or bias on the part of any government official, and we conclude that the cancellation of the IFB and the transfer of the FAST requirement to the section 8(a) program were unobjectionable.

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<sup>1</sup>Bid opening under the revised IFB has been postponed pending our decision in this protest.

<sup>2</sup>Citations to the hearing's videotape transcript are referenced as "VT".

## CANCELLATION OF THE IFB

Because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed, a contracting agency must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1); Days Inn Marina, B-254913, Jan. 18, 1994, 94-1 CPD ¶ 23 at 2. The regulations authorizing cancellation after bid opening specify that inadequate or ambiguous specifications may constitute a compelling reason to cancel an IFB. FAR § 14.404-1(c)(1); see Ferguson-Williams, Inc., B-258460, B-258461, Jan. 24, 1995, 95-1 CPD ¶ 39 at 4. Contracting officials have broad discretion to determine whether a compelling reason to cancel exists, and our review is limited to considering the reasonableness of their decision. H. Angelo & Co., Inc., B-260680.2, Aug. 21, 1995, 95-2 CPD ¶ 74 at 3.

The Army reports that it canceled the IFB primarily because it did not accurately reflect the number of instructors to be provided. The Army also reports that cancellation was required because the IFB failed to place a ceiling on the course transcript fee which each student could be charged by the contractor, and failed to require an on-site project manager.

With the exception of the project manager requirement, ACS does not dispute the agency's description of its minimum needs. Instead, ACS maintains that because it is willing to provide the additional instructors and transcript services at no extra cost, the Army's cancellation is unwarranted. In this regard, ACS maintains that the only reason the Army has added the project management requirement, and is otherwise pursuing cancellation of the solicitation instead of a post-award modification, is that the Army wants to avoid a contract award to ACS. According to the protester, the Army's mischaracterization of ACS' performance history and the agency's post-bid opening discovery of the original solicitation deficiencies demonstrate the Army's bad faith against ACS.

Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of mere inference or supposition. See Lancaster & Co., B-254418, Dec. 14, 1993, 93-2 CPD ¶ 319 at 7. Where, as here, a protester alleges bias or bad faith on the part of a procurement official, our focus is on whether the official exerted improper influence in the procurement on behalf of the awardee or against the protester. See Prose, Inc., B-259016, Feb. 28, 1995, 95-1 CPD ¶ 123 at 3. To show bad faith, a protester must show that the contracting agency directed its actions with the specific and malicious intent to injure the protester. See Robertson Leasing Corp., B-275152, Jan. 27, 1997, 97-1 CPD ¶ 49 at 4.

The crux of the protester's bad faith allegations appears to derive from the protester's disagreement with the conclusions expressed in the FAST contract administrator's December 5, 1996, memorandum, in which she characterized ACS as an "administrative nightmare." ACS argues that this document reflects the

unreasonable attitude of the contract administration department towards ACS, and that the conclusions set forth in the memo are erroneous. First, contrary to the memorandum's description, ACS maintains that while it has been involved in wage rate inquiries, it has not committed any labor or wage rate "violations." ACS also maintains that the Army has no basis for characterizing ACS as having "cash flow problems." Finally, ACS maintains that all the administrative difficulties cited by the FAST contract administrator in the December 5 memorandum were caused by the Fort Drum contract administration staff.

We find ACS' position to be unsupported by the record. First, the documents in the record, as well as testimony by numerous witnesses, corroborate the description of ACS' performance set forth in the December 5 memorandum. Despite ACS' contentions to the contrary, documents in the record and the cognizant DOL investigator's testimony unequivocally show that on at least two occasions--November 28, 1994 and August 14, 1996--ACS failed to comply with applicable wage rate determinations. Although each situation was ultimately corrected by ACS, the DOL investigator characterized these difficulties as "violations" and testified that ACS' response to the 1996 violations was not prompt; the August 1996 wage rate violations were not rectified by ACS until November of that year.

In addition, although ACS maintains that the Army's conclusion that ACS suffered from "cash flow problems" was unfounded, testimony from many of the Fort Drum personnel--including the FAST contract administrator--shows that the personnel based this conclusion on the ACS vice president's frequent telephone inquiries regarding payment of the bi-monthly invoices; the contractor's refusal to perform during the government's November 1995 furlough; the firm's documented wage rate violations; and the fact that the ACS vice president had advised the FAST contract administrator that he was paying employees' wages out of his own pocket. VT I: 11:58, 12:58, 13:07, and 14:17; VT II: 13:59 and 14:18. Although ACS disagrees with the Army's conclusions, on the record before us, we cannot say that the FAST contract administrator's concerns regarding ACS' financial status were arbitrary, unfounded, or otherwise made in bad faith.<sup>3</sup>

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<sup>3</sup>The FAST contract administrator testified that she "made [the December 5 memorandum] very strong" because the contract specialist had previously ignored one of her recommendations to conduct a preaward survey of another contractor, to the Army's detriment. VT II: 13:52. The FAST contract administrator also testified that her objective in writing the December 5 memorandum was not to avoid a contract award to ACS, but to ensure that a pre-award survey was conducted to confirm the contractor's financial ability to perform. VT II: 13:40 and 13:51.

Further, despite ACS' allegations to the contrary, we see no persuasive evidence in the record that the Army's decision to cancel the PLDC solicitation otherwise was motivated by bad faith or ill will toward ACS. All of the Fort Drum and government witnesses testified that they were unaware of any ill will harbored against ACS, or any attempt on the part of any government personnel to steer Fort Drum contracts away from the protester. VT I: 12:43, 12:47, 14:46, 15:39, 16:19, and 17:11; VT II: 14:09 and 15:33. In particular, the contract specialist--characterized by ACS as the sole Fort Drum contracting official ACS believed to be honest and trustworthy, VT I: 11:20-- testified that no one pressured her to cancel the PLDC IFB, that there was "no animosity against ACS that I know of," and that she recommended cancellation of the original IFB based on the specification deficiencies cited above. VT II: 12:14. The contract specialist also noted that because the Army had failed to detect the specification deficiencies earlier, she was "concerned" and agreed with ACS that the "timing [of the cancellation decision] looks bad"; however, the contract specialist repeatedly and emphatically stated that "[the cancellation] truly did fall out that way."<sup>4</sup> VT II: 12:16 and 12:59.

To support its argument that the cancellation was done in bad faith, ACS points to the fact that the defects in the solicitation were not discovered until after bid opening. In response, the Army furnished the following explanation for why the contract specialist did not realize that the IFB was defective until after bid opening.

When JCC began performing the predecessor PLDC contract, the prior Fort Drum Commandant--the head of the NCO Academy--asked JCC to perform according to the Army's actual minimum needs--using three instructors to teach three concurrent platoon courses; providing a full-time project manager; and charging modest transcript fees--but never executed a modification of the predecessor solicitation's terms. Instead, JCC performed the additional requirements according to an unwritten "gentlemen's agreement" between the commandant and the president of JCC--which was never disclosed to the Fort Drum contract administration or contracting personnel. VT I: 15:55. When it was time to resolicit the PLDC services, the contract specialist gave a copy of the prior solicitation's terms to the new Fort Drum commandant for comment.<sup>5</sup> VT II: 11:20. The commandant approved the predecessor terms for resolicitation on the understanding that they were the terms under which the prior contract had been performed. VT I: 15:54. It was not until January 24, 1997--when one of the Fort Drum contract administrators

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<sup>4</sup>The contract specialist also testified that she had no reason to think that the FAST contract specialist who wrote the December 5 memorandum acted in bad faith, or harbored ill will against ACS. VT I: 12:58:25.

<sup>5</sup>The new commandant had only been "on the job" for "2.5 months" when he received a copy of the predecessor PLDC solicitation's terms from the contract specialist. VT I: 15:54.

was reviewing the solicitation--that the discrepancies between JCC's actual performance and the solicitation's stated terms were discovered.<sup>6</sup> VT I: 15:33 and 16:18. That same day, the contract specialist convened a meeting with the contract administrator and the new commandant. After comparing the NCO Academy's actual needs with the terms of the IFB, the contract specialist decided to cancel the IFB because it did not reflect the Army's minimum requirements regarding class size, instructors, transcript fee costs, and project management. VT II: 12:26. In sum, there simply is no basis in the record to conclude that the timing of the cancellation--specifically, the failure to recognize the defects in the IFB until after bid opening--is evidence of bad faith toward ACS.

Given our conclusion that there is no evidence in the record establishing that the decision to cancel was made in bad faith, the remaining issue is whether the agency had a compelling reason to cancel the IFB. FAR § 14.404-1(a)(1). We conclude that it did.

The record shows that the canceled IFB was materially defective. First, the solicitation did not ensure performance of the required accreditation instruction in accordance with the Army's actual needs. In this regard, the record shows that in order to award the requisite 6 hours of college credit, the successful contractor must supplement the Army's nonaccredited PLDC instruction with college-certified and accredited instructors and written material. Although the canceled IFB's pricing schedule required bidders to provide all personnel and supplies necessary to accredit classes comprised of "approximately 80 students" each, the Army reports that its education regulations, as well as facility and scheduling constraints, in fact require all NCO Academy instruction--including the supplemental college instruction necessary to accredit the PLDC course--to be provided to groups no larger than 32 students. VT I: 15:57. Additionally, because there are only 18 available hours per PLDC course to provide supplemental instruction for each student, the PLDC instruction must be performed using three instructors, teaching concurrently. *Id.* According to the contracting officer for the PLDC procurement, this defect constituted the primary basis for cancellation of the IFB. VT II: 15:36.

Nor did the canceled IFB reflect the Army's actual transcript fee needs. Under the IFB, the successful bidder must provide a transcript service for each PLDC student. The Army reports that, since the PLDC course constitutes an enlisted soldier's first opportunity to pursue post-secondary and college education, and since enlistees' salaries may not accommodate the typical service charge of \$125 per transcript, soldiers will be dissuaded from enrolling in the PLDC course--and pursuing further education opportunities--unless the contractor provides the transcript service at a

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<sup>6</sup>The contract administrator was reviewing the solicitation so she could effectively administer and monitor ACS' performance of the contract. VT II: 15:24.

modest cost to the Army student.<sup>7</sup> VT I: 15:56 and 16:04. Since the canceled IFB contained no ceiling on the transcript fee, the Army concluded that this defect also warranted cancellation.

As noted above, ACS does not dispute the Army's position that its minimum needs require all instruction--including the supplemental instruction necessary to accomplish the PLDC accreditation--to be provided by means of three concurrent lectures to smaller class groups. Nor does ACS disagree with the agency's transcript fee requirement. Since it is apparent from the record that the IFB did not reflect the agency's actual needs in at least two respects<sup>8</sup>--and, in fact misled ACS into concluding that it could provide the supplemental instruction necessary to award college accreditation by means of one instructor per 80-student class--the IFB was clearly defective. Under these circumstances, the agency reasonably determined that it had a compelling basis to cancel the IFB and resolicit, stating its actual requirements.<sup>9</sup> Ferguson Williams, Inc., supra. In this regard, although ACS suggests that the agency should amend the defective IFB by means of a post-award contract modification, due to the adverse impact which would inure to the competitive bidding system, a contracting agency may not award a contract with the

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<sup>7</sup>The IFB stated that "[a]ny fees required for this [transcript] service will be borne by the student, and collection of those fees will be entirely the responsibility of the contractor."

<sup>8</sup>As noted above, the Army also reports that the IFB was defective because it failed to include a project manager position which is needed by the agency to provide 10 hours of contract oversight and 10 hours of student counseling per week. ACS disagrees with this portion of the agency's cancellation rationale because it believes that the Army has in-house staff who could provide these services on a cheaper and more efficient basis. Since we conclude that the instructor and transcript fee deficiencies in the original IFB warranted cancellation, we need not consider this aspect of ACS' challenge.

<sup>9</sup>As noted above, the original IFB limited competition to accredited colleges and universities. Although the Army removed this restriction by amendment to the solicitation, the record shows that ACS was the only bidder who received this amendment. The Army reports that the removal of the original eligibility restriction should result in enhanced competition; we think this circumstance further supports cancellation in this case. See Siemens Power Corp.; Asea Brown Boveri Inc., B-257167, B-257167.2, Aug. 11, 1994, 94-2 CPD ¶ 160 at 3-4 (possibility that agency may receive enhanced competition that could result in lower costs to the government constitutes a compelling basis for cancellation of an IFB after bid opening where IFB failed to apprise prospective bidders that agency's minimum needs could be satisfied by two types of technical equipment).

intent to modify it. See American Television Sys., B-220087.3, June 19, 1986, 86-1 CPD ¶ 562 at 3-4, recon. denied, B-220087.5, Sept. 18, 1986, 86-2 CPD ¶ 314.

#### FAILURE TO EXERCISE THE OPTION AND TRANSFER OF THE FAST REQUIREMENT

ACS protests the Army's refusal to exercise the final option of its FAST contract, and the subsequent transfer of this requirement to the SBA under the section 8(a) program. ACS contends that these actions were taken in retaliation for ACS' current protest, and because of the ill will which the Fort Drum contract administration office harbors against ACS.

To the extent ACS challenges the agency's refusal to exercise the final option of its FAST contract, this issue is not for our review since a contracting agency's decision whether to exercise an option is a matter of contract administration outside the scope of our bid protest function. Walmac, Inc., B-244741, Oct. 22, 1991, 91-2 CPD ¶ 358 at 2. To the extent ACS challenges the propriety of the agency's offering the FAST procurement to the SBA's section 8(a) program, while we will consider its protest, we find it lacks merit because the agency did not act improperly.

Section 8(a) of the Small Business Act authorizes the SBA to contract with government agencies and to arrange for performance of such contracts by awarding subcontracts to socially and economically disadvantaged small businesses. 15 U.S.C. § 637(a) (1994). The section 8(a) program's implementing regulations provide that the SBA will not accept procurements not previously in the 8(a) program if, among other circumstances, acceptance of the procurement would have an adverse impact on an individual small business. 13 C.F.R. § 124.309(c) (1997). However, if the requirement being performed by the small business is a "new requirement," the adverse impact rule does not apply. *Id.* Because the Small Business Act affords the SBA and contracting agencies broad discretion in selecting procurements for the section 8(a) program, our Office reviews challenges to decisions to procure requirements under section 8(a) only to ensure that agency officials have not acted in bad faith, and that applicable regulations have been followed. Bid Protest Regulations, 4 C.F.R. § 21.5(b)(3) (1997); Grace Indus., Inc., B-274378, Nov. 8, 1996, 96-2 CPD ¶ 178 at 2.

The Army reports that although the subject matter being taught under the converted procurement is still remedial education skills, the method and curriculum for teaching the FAST program have been so substantially modified that the replacement procurement constitutes a "new requirement" within the definition set forth in the implementing regulation, 13 C.F.R. § 124.309(c). That regulation provides, in relevant part:

The expansion or alteration of an existing requirement shall be considered a new requirement where the requirement is materially

expanded or modified so that the ensuing requirement is not substantially similar to the prior requirement due to the magnitude of the expansion or alteration.

ACS disagrees with the Army's characterization of the procurement as "new," and contends that, because the subject matter of the procurement has not changed, the Army's offering of the requirement to the section 8(a) program was not proper and in fact was made in bad faith. ACS argues that the Army's bad faith is evidenced by the agency's failure to advise the SBA that a small business had been providing the FAST services prior to the section 8(a) offering, as required by 13 C.F.R. § 124.308(c), which states that a contracting agency's section 8(a) offering letter "shall contain," in part, the "acquisition history, if any, of the requirement," 13 C.F.R. § 124.308(c)(9), as well as the "names and addresses of any small business contractors which have performed on [the offered] requirement during the previous 24 months." 13 C.F.R. § 124.308(c)(10).

As discussed above, there is simply no evidence in this record to support ACS' contentions that Fort Drum officials harbor ill will toward ACS. Moreover, while ACS contends that the FAST requirement was transferred to the section 8(a) program in retaliation for ACS' protest against the PLDC IFB cancellation, the record establishes that the decision to procure FAST services by means of a section 8(a) contract was made at least 2 months prior to that protest. VT II: 14:55.

In early spring of 1996, the chief of Fort Drum's education office learned that prospective funding cuts required a reassessment of the NCO Academy's education programs to learn where money could be saved. VT II: 17:36. With the assistance of a Fort Drum contract specialist--who was not involved in the PLDC procurement--the Fort Drum education office chief began a survey of the NCO Academy and learned that of all the education programs, the FAST requirement was the least effective. Specifically, Fort Drum's research showed that in 1995, only 12 percent of the enlisted soldiers who completed the FAST course passed with a successful testing score (110);<sup>10</sup> in 1996, only 8 percent of the FAST enrollees passed. After comparing the cost of the FAST program to the success rate statistics, the Fort Drum education office determined that the FAST program was not cost effective, and would either have to be modified or eliminated. Consequently, the education office began to investigate how other Army facilities were acquiring their FAST requirements. VT II: 14:45 and 17:36.

In early May, the contract specialist contacted the Army installation at Fort Bragg, North Carolina, and learned that its education office had achieved significant success in its FAST program--a 65 percent pass rate--by switching to a computer-

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<sup>10</sup>In order to be eligible for reenlistment, Army soldiers must achieve a basic test score of 110 or higher.

based tutorial. VT II: 14:49. On May 3, the contract specialist presented these results to the Fort Drum education office. On October 15, Fort Drum officially decided to change the FAST program to the computer-based teaching approach used at Fort Bragg. On October 31, the contract specialist contacted the cognizant SBA official to discuss the feasibility of procuring the requirement under the section 8(a) program; during this conversation, the SBA official advised the contract specialist that the procurement constituted a new requirement. On November 13, Fort Drum offered the revised FAST program to the SBA under the section 8(a) program; on November 17, the SBA accepted the FAST program into the section 8(a) program as a new requirement.

The contract specialist and chief of the education office each testified that their recommendation to convert the FAST program to a computer-based section 8(a) contract was not retaliatory against ACS or otherwise motivated by bad faith. VT II: 14:55 and 17:41. Since neither of these officials was involved in the PLDC solicitation, and since we regard their testimony as credible, we find no evidence of bad faith.

While ACS contends that the Army violated 13 C.F.R. §§ 124.308(c)(9) and (10), because its offering letter allegedly did not advise the SBA that a small business--ACS--had been providing the FAST services, the SBA has since advised our Office that even if ACS' assertion is correct,<sup>11</sup> the SBA concurs in the Army's classification of the offered procurement as a "new requirement" within the meaning of its implementing regulation, 13 C.F.R. § 124.309(c). According to the SBA, even though the purpose of the section 8(a) FAST procurement--to provide basic remedial education services--has not changed, the offered procurement nonetheless constitutes a new requirement primarily because the revised curriculum requires a new performance approach utilizing a computer-based format and key personnel with significant computer expertise. SBA also reports that it considers the section 8(a) FAST procurement to constitute a new requirement because the conversion of

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<sup>11</sup>The Army's November 13 letter which officially offered the FAST requirement to the SBA's section 8(a) program generally referenced an earlier conversation between the Fort Drum contract specialist and the cognizant SBA official. At the hearing, the contract specialist testified--consistent with her contemporaneous memorandum of the telephone conversation--that she advised the SBA official that a small business had been performing the FAST requirement. The SBA official testified that he could not recall whether or not he was ever apprised that a small business had been performing the FAST services, but that based on the contract specialist's description of the changed performance approach--using computerized tutorials--he concluded the requirement was "new." We have no basis to doubt the contract specialist's veracity; we found her to be credible, sincere and forthcoming with extensive details about her investigation and her telephone conversations with the SBA.

the FAST curriculum to a computer-based instruction results in significantly higher costs to the contractor, and expands the pool of eligible contractors to include contractors with computer expertise.<sup>12</sup>

Since SBA concurs in the Army's determination that the computer-based FAST procurement constitutes a new requirement, and since there is no evidence to substantiate ACS' contentions of bad faith or to show that applicable regulations were violated, we see no basis to object to the transfer of the FAST program to the SBA's section 8(a) program.

The protests are denied.

Comptroller General  
of the United States

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<sup>12</sup>The FAST contract which ACS performed provided remedial education instruction to 35 students using an instructor-classroom format and a workbook curriculum. Students progressed through the FAST course milestones according to a pre-set group curriculum pace.

In contrast, the revised FAST requirement utilizes a completely different teaching approach and format. Instead of workbooks, students utilize computers--which have been installed with a self-paced remedial education tutorial software. Unlike the contract which ACS was performing, the FAST tutorial course is available to students 24 hours a day; because each student's progression through the course is self-paced, no group instruction is utilized or necessary--and students work at varying paces, according to their individual needs and abilities. Additionally, the new FAST requirement requires personnel to have significant computer expertise; in this regard, the record indicates that because the computer tutorial provides the actual instruction, each key personnel's ability to handle computer "glitches" is critical.